



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0050]

RIN 1625-AA09

Drawbridge Operation Regulation; Sturgeon Bay, Sturgeon Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is modifying the operating regulation that governs the Bayview (State Route 42/57) Bridge, Mile 3.0, Maple-Oregon Bridge, Mile 4.17, and Michigan Street Bridge, Mile 4.3, all over Sturgeon Bay Ship Canal in Sturgeon Bay, WI, to allow testing of the remote operation equipment for all three drawbridges. The operating schedules are not changing. The three drawbridges will be remotely operated by a single tender throughout the 2017 navigation season with request for comments from all stakeholders on the safety and effectiveness of the remote operation arrangement.

DATES: This interim rule is effective from [Insert date 30 days after date of publication in the FEDERAL REGISTER] to midnight on March 15, 2018. Comments and related material must reach the Coast Guard on or before December 1, 2017.

ADDRESSES: You may submit comments or view documents

mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type [USCG-2017-0050] in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call or e-mail Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, or Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
WI-DOT	Wisconsin Department of Transportation

II. Background Information and Regulatory History

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are

"impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the operating schedules and methods to signal for openings of the three drawbridges across Sturgeon Bay Ship Canal under this regulation are not changing, and WI-DOT has been testing the remote operation equipment the past two navigation seasons without any reported negative impact to safety or navigation. Also, stakeholders and the general public will have the opportunity, and are encouraged, to submit comments throughout most of the interim rule period.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this interim rule under the authority of 33 U.S.C. 499. The operating schedules for the three drawbridges that cross Sturgeon Bay Ship Canal in Sturgeon Bay, WI are found under the existing regulation, 33 CFR 117.1101; Surgeon Bay. All three drawbridges are bascule-type bridges with unlimited vertical clearance in the open position. In the closed position, the three drawbridges provide the following clearances: Bayview Bridge 42-feet, Maple-Oregon Bridge 25-feet, and Michigan Street Bridge 14-feet. Under the current regulations, from March 15 thru November 30, the Bayview Bridge opens on signal for vessels 24 hours per day, 7 days per week. Between December 1 and March

14 the Bayview Bridge will open for vessels if at least 12-hours advance notice is provided. Between March 15 and December 31, the Maple-Oregon Bridge will open for recreational vessels on the quarter-hour and three-quarter hour, 24 hours per day, 7 days per week. Between March 15 and December 31 the Michigan Street Bridge will open for vessels on the hour and half-hour, 24 hours per day, 7 days per week. Between January 1 and March 14 both the Maple-Oregon and the Michigan Street Bridges will open for vessels if at least 12-hours advance notice is provided. All three drawbridges open at any time for commercial vessels. Due to the close proximity of the Maple-Oregon and the Michigan Street Bridges, both are required to open simultaneously if requested by a commercial vessel and both shall open on signal at any time if at least 10 vessels have accumulated at either bridge waiting for an opening or vessels are seeking shelter from severe weather.

WI-DOT, owner of all three drawbridges, has requested the Coast Guard authorize permanent remote operation of Bayview Bridge and Michigan Street Bridge, with operation from a single tender stationed at the middle bridge, Maple-Oregon Bridge, under the provisions of 33 CFR 117.42. This interim rule is intended to allow remote operation arrangement throughout the 2017 navigation season under testing conditions to fully evaluate any impacts at the conclusion of the test period. Authorizing temporary remote operation of the Sturgeon Bay

drawbridges provides a good opportunity to evaluate the use of current technology to monitor and operate remote drawbridges. This is particularly true given the conditions on this waterway and the demonstrated record over time by the bridge owner, WI-DOT, to efficiently manage and operate their drawbridges within the Ninth Coast Guard District.

The Sturgeon Bay Ship Canal carries large (freighter) and smaller (tug/barge) commercial vessels, recreational vessels (including sailing vessels), vessels seeking emergency yard services, transient vessels, and vessels seeking shelter from severe weather. There are numerous commercial, recreational, and transient facilities along Sturgeon Bay Ship Canal, including a shipyard capable of servicing freighter size commercial vessels. Vessels may enter or exit the Ship Canal through east or west entrances, with some traffic passing through the entire waterway and requiring openings of all three drawbridges, and some traffic reaching facilities without requiring any drawbridge openings by entering the waterway from either the Lake Michigan or Green Bay sides.

Based on data provided by WI-DOT for the 2014 and 2015 navigation seasons, the following charts show the number of commercial and recreational vessel traffic openings for each bridge:

Bayview Bridge:

YEAR	COMMERCIAL VESSELS	RECREATIONAL VESSELS	TOTAL OPENINGS
2014	179	466	579
2015	171	476	570

Maple-Oregon Bridge:

YEAR	COMMERCIAL VESSELS	RECREATIONAL VESSELS	TOTAL OPENINGS
2014	470	1335	1351
2015	463	1449	1442

Michigan Street Bridge:

YEAR	COMMERCIAL VESSELS	RECREATIONAL VESSELS	TOTAL OPENINGS
2014	1766	2897	2764
2015	2057	3922	3239

WI-DOT will gather additional throughout the 2017 navigation season and during this interim rule. WI-DOT will also collect additional data to evaluate the remote operation arrangement, including vehicular and pedestrian traffic totals. The operating schedules for all three drawbridges will not be changed.

IV. Discussion of the Rule

WI-DOT completed installation of remote operation equipment on all three drawbridges in 2014 and operated all three drawbridges via remote operation equipment from the middle bridge, Maple-Oregon, during the 2015 and 2016

navigation seasons. During this period WI-DOT identified improvements to equipment, best practices and protocols.

WI-DOT has proposed permanently operating the Bayview and Michigan Street Bridges with a single bridge tender operating remote equipment from the Maple-Oregon Bridge, which is located between the Bayview and Michigan Street Bridges. In order to fulfill the required methods to receive and respond to bridge opening requests from vessels, as outlined in Subpart A of 33 CFR 117, WI-DOT will employ the following equipment and protocols; separate programmable logic controllers (PLC) designed for each bridge on fiber optic connections, digital camera coverage (with ability to pan and provide overlap video coverage) of all approaches from land and water, thermal imaging during severe weather or restricted visibility, two-way audio capability, VHF-FM marine radiotelephone, landline telephone, horn, signal lights, back-up and redundant systems, exclusive duties of bridge tenders, and signage at the bridges advising mariners of communication and signaling methods. WI-DOT has developed protocols to suspend the remote operation arrangement and provide tenders at each drawbridge during emergencies or equipment failures and during busy holidays or weekends (Memorial Day, July Fourth, Labor Day). At the conclusion of the comment period of this interim rule period WI-DOT will provide a report documenting various data and observations, including;

frequency of bridge openings, vehicular traffic counts, vessel traffic counts (and type), pedestrian counts, frequency of equipment failure and temporary suspension of remote operation, frequency of restricted visibility, best practices, lessons learned, and any other information useful for evaluating the remote operation arrangement. The Coast Guard and WI-DOT will evaluate the data and all comments provided by stakeholders and the general public and determine whether to extend the test period, modify the arrangement, or make the remote operation arrangement permanent in Sturgeon Bay.

The existing operating schedules of the drawbridges will not be changed during the interim rule period, and are not expected to be changed following the period.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both

costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the fact no changes to operating schedules are implemented with this action. The remote drawbridge operation is expected and designed to be transparent to vessels with no additional requirements or actions necessary to pass any of the three drawbridges.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This Interim Rule imposes no changes or additional requirements for any vessel operator or small entity to pass a drawbridge compared to current conditions.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional

Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the

relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Commandant Instruction.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy

Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.1101, add introductory text to read as follows:

§ 117.1101 Sturgeon Bay.

The draws of the Bayview (State Route 42/57) and Michigan

Street bridges, miles 3.0 and 4.3, respectively, at Sturgeon Bay, are remotely operated by the tender at Maple-Oregon bridge, mile 4.17, and shall open as follows:

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Dated: February 3, 2017

J. E. Ryan
Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District